

Notice of Non-Responsive Amendment

1. The amendment filed March 8, 2010, is non-responsive for the following reason:

The amendment filed March 8, 2010, would amend all claims, which were previously drawn to the elected invention, so as to present only claims drawn to a non-elected invention.

The claims, as would be amended, are not readable on the elected invention for the following reasons:

Claims 32-34, as would be amended, are directed to a method of attracting T lymphocyte or mature host dendritic cells to a site of a spontaneous genetically identical tumor¹ in a mammal (claim 32), an autologous tumor (claim 33), or a lung cancer tumor in a human (claim 34).

In contrast, the originally presented claims were directed to a method of attracting T lymphocyte or mature host dendritic cells to a site of a spontaneous *syngeneic* tumor in a mammal.

Thus, the claims, as would be amended, are directed to patentably distinct subject matter, the examination of which would require new and different considerations and searches not before necessary; and as such, examination of the claims, as would be amended, would be unduly burdensome.

Here, since the originally presented and newly claimed inventions are patentably distinct, and because the examination of both one could not be made without serious burden, it is proper to restrict each from the other. See M.P.E.P. § 803.

Moreover, Applicant is reminded that such restriction for examination purposes, as indicated herein, is proper since the inventions are independent or distinct for the reasons provided and there would be a serious search and examination burden, if restriction were not required, for any of following reasons, which may apply:

(a) the inventions have acquired a separate status in the art in view of their different classification;

¹ As should be evident given Applicant's remarks at pages 4 and 5 of the amendment filed March 8, 2011, this term (i.e., spontaneous genetically identical tumor) is used by Applicant to distinguish the subject matter to which the claims would be directed from the subject matter to which the originally presented claims (i.e., a method of attracting T lymphocytes or mature host dendritic cells to a syngeneic tumor), so as to obviate grounds of rejection of record.

- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, after entry of the amendment, all remaining claims would be withdrawn from consideration as being directed to non-elected inventions, and therefore the amendment, which presents only claims drawn to such non-elected inventions, is non-responsive. See 37 CFR 1.142(b) and MPEP § 821.03.

2. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHEN RAWLINGS whose telephone number is (571)272-0836. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Misook Yu can be reached on (571) 272-0839. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen L. Rawlings/
Primary Examiner, Art Unit 1643

slr
July 3, 2011